IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10222 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JANAK SHANTILAL JAISWAL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10222 of 2001

MR SATISH R PATEL for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/02/2002

ORAL JUDGEMENT

1. Commissioner of Police, Baroda City, Baroda, passed an order on the 12th October, 2001, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said

Act.

2. The detaining authority took into consideration two offences registered against the detenu under Bombay Prohibition Act. The authority also considered the statements of three anonymous witnesses. According to the authority, the activity of the detenu is that of a bootlegger and is detrimental to public order. The authority was satisfied that the witnesses suffered from genuine fear from the detenu in respect of their person and property and, therefore, powers under Section 9(2) of the PASA Act are required to be exercised by not disclosing identity of the witnesses. The detaining authority considered the possibility of resorting to less drastic remedies under ordinary laws and came to conclusion that in order to immediately prevent the detenu from pursuing his illegal and anti-social activities, detention under PASA Act is required to be resorted to.

3. The petitioner has challenged the order of detention by this petition on various grounds. However. Mr. Patel, learned advocate appearing for the petitioner, has restricted his arguments to the ground of non-consideration of a representation made on behalf of the petitioner by the son of the petitioner. He submitted that a representation was made to the Home Minister of the State of Gujarat on the 18th October, 2001, which was received on the 19th October, 2001. However, the same has not been considered or replied to by the authority concerned. Mr. Patel has placed on record the communication received from the Superintendent of Post Offices indicating that it was delivered to the addressee on the 19th October, 2001. He submitted that the right of the detenu, therefore, of making an effective representation is infringed and the continued detention, therefore, would be rendered bad in law. Mr. Patel, therefore, urged that the petition may be allowed and the order impugned may be quashed and set aside.

4. Mr. D.P. Joshi, learned Assistant Government Pleader, has opposed this petition. He is, however, not in a position to deny that the representation has not been considered by the authority till date.

5. Having regard to rival side contentions, the fact that emerges, without any dispute, is that a representation was sent to the Home Minister on behalf of the petitioner-detenu by his son on the 18th October, 2001. The authority received the said representation on the 19th October, 2001. However, the authority concerned

has not considered or replied to the same till today. The detenu had a right of making an effective representation guaranteed under the Constitution [Article 22(5)]. It is expected of the Government to afford the detenu an earliest opportunity of making a representation against the order and the very purpose behind providing this right is that the Government may reconsider the decision of detaining the detenu in light of the representation. Non-consideration of the representation and nor replying to the same would result in to rendering the provisions of Article 22(5) as non-existent. This in itself is sufficient to hold that the continued detention is bad in law. The petition deserves to be allowed on this ground alone.

8. In view the above discussion, this petition is allowed. The impugned order of detention dated the 12th December, 2001, passed against the petitioner-detenu is hereby quashed. The detenu-Janak Shantilal Jaiswal is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

9. Direct service is permitted.

[A.L. DAVE, J.]

gt